Ameritech to an absolute-perfection standard is not required by the terms of the competitive checklist.[731] Rather, Ameritech's statutory obligation under section 271(c)(2)(B)(vii)(I) is to do what is necessary to ensure that its 911 database is populated as accurately, and that errors are detected and remedied as quickly, for entries submitted by competing carriers as it is for its own entries. For facilities-based carriers that physically interconnect with Ameritech, Ameritech has the additional duties of providing nondiscriminatory access to the 911 database and dedicated 911 trunking. We cannot find on the current record that Ameritech is providing nondiscriminatory access to 911 services because, as discussed above, it has not demonstrated by a preponderance of the evidence that it provides competitors with the same level of accuracy and access that it provides to itself.

279. We do not, based on the record received in the instant proceeding, enunciate specific actions that Ameritech should take to demonstrate its compliance with this checklist item. As mentioned above, the manner in which 911 access is provided and the accuracy of the 911 database is at issue in a formal complaint before the Michigan Commission. It appears that a far more extensive record on this topic has been submitted to the Michigan Commission in that complaint action and, according to the Michigan Commission, the record there presents options that "should minimize the potential for . . . difficulties [like the ones experienced by the City of Southfield] in the future."[732] We expect that Ameritech will work closely with the Michigan Commission to take the appropriate steps to improve the accuracy of and access to its 911 database and to protect the integrity of competitors' end user data. Then and only then can Ameritech fulfill its obligation to provide competitors with nondiscriminatory access to 911 and E911 services. Although we recognize that Ameritech has already instituted some processes and procedures to achieve these objectives, we nevertheless concur with the City of Southfield that "[i]t is unacceptable to jeopardize public safety as Ameritech struggles to integrate their network with their competitors."[733]

F. Additional Concerns

280. Because we find that Ameritech has not demonstrated that it has fully implemented the competitive checklist with respect to OSS, interconnection, and 911 and E911 services, we need not decide in this Order whether Ameritech is providing the

[731] Ameritech Reply Comments, Vol. 5R.11, Jenkins Reply Aff. at 24.

[732] Michigan Commission Consultation at 42.

[733] MFS WorldCom Comments, Exh. 3, Letter from Robert R. Block, City Administrator, City of Southfield, to John Strand, Chairman, Michigan Public Service Commission, at 1 (Oct. 21, 1996).

remaining checklist items.[734] Still, as stated above, in order to provide further guidance with respect to Ameritech's checklist compliance, we address here our concerns regarding certain other checklist items. We reiterate that we make no findings with respect to Ameritech's compliance with those items discussed herein.

1. Pricing of Checklist Items

281. We do not reach the question of whether Ameritech's pricing of checklist items complies with the requirements of section 271 given our findings above concerning Ameritech's failure to comply with the checklist on other grounds. Nonetheless, given that efficient competitive entry into the local market is vitally dependent upon appropriate pricing of the checklist items, we believe it important to discuss our general concerns about pricing. Our hope is that this discussion will help expedite Ameritech's entry into long distance in Michigan and the entry of the other BOCs into the in-region interLATA market by providing more guidance as to what showing is required in future applications to demonstrate full compliance with the checklist. We hope that Ameritech will demonstrate compliance with the principles set forth below in its next application, and we urge the Department of Justice and the state commission to address Ameritech's showing on pricing of checklist items in the future.

282. Section 271(d) requires the Commission to determine that Ameritech has fully implemented the competitive checklist. The competitive checklist, in turn, requires the BOC to provide interconnection, access to unbundled network elements, transport and termination, and resale at prices that are "in accordance with" section 252(d).[735] Section 252(d) provides that rates for interconnection, unbundled network elements, and transport and termination must be cost-based.[736] Specifically as to interconnection and unbundled network elements,

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[734] We note that Ameritech's compliance with section 271(c)(2)(B)(ii), its duty to provide nondisriminatory access to unbundled network elements in accordance with sections 251(c)(3) and 252(d)(1), and section 271(c)(2)(B)(xiv), its duty to provide resale in accordance with sections 251(c)(4) and 252(d)(3), is discussed in the OSS section above. *See supra* Section VI.C. As we also discuss in that section, we have concerns about Ameritech's compliance with section 271(c)(2)(B)(iv), its duty to provide unbundled local loops. *See supra* para. 219.

[735] 47 U.S.C. §§ 271(c)(2)(B)(i), (ii), (xiii), (xiv).

[736] *Id.* §§ 252(d)(1)("Determination by a State commission of the just and reasonable rates" for interconnection and unbundled network elements "shall be . . . based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element . . . "); 252(d)(2) ("a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless . . . such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and . . . such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls").

section 252(d) provides that rates must be "based on the cost . . . of providing the interconnection or network element . . . and may include a reasonable profit."[737] Section 252(d)(3) provides that the price for resold service pursuant to section 251(c)(4) shall be based on "retail rates . . . excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[738] The Act vests in the Commission the exclusive responsibility for determining whether a BOC has in fact complied with the competitive checklist.[739] In so doing, we must assess whether a BOC has priced interconnection, unbundled network elements, transport and termination, and resale in accordance with the pricing requirements set forth in section 252(d) and, therefore, whether the BOC has fully implemented the competitive checklist.

283. We recognize that the Eighth Circuit has held that the Commission lacks jurisdiction to issue national rules establishing a methodology by which the states determine the rates for interconnection, unbundled network elements, resale, and transport and termination in state-arbitrated interconnection agreements pursuant to section 252.[740] The court, however, addressed the challenge to the Commission's pricing rules on jurisdictional grounds and expressly did not address the substantive merits of the Commission's rules. The court, therefore, made no ruling concerning the proper meaning of the statutory requirement in section 252(d) that rates must be cost-based.

284. Because the Eighth Circuit concluded that the Commission lacked authority to prescribe a national pricing methodology to implement the requirements of section 252(d), if that decision stands, the meaning of section 252(d) ultimately will be determined through *de novo* review of state determinations by the federal district courts. The Act provides that parties aggrieved by state determinations under section 252 may sue in federal district court.[741] Consequently, the district courts will review numerous interconnection agreements from some, if not all, of the states and the District of Columbia.[742] The Courts of Appeals and, perhaps

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[737] *Id.* § 252(d)(1).

[738] *Id.* § 252(d)(3).

[739] In making this determination, we are required to consult with the relevant state commission and the Department of Justice. *Id.* § 271(d)(2).

[740] *Iowa Utils. Bd.*, 1997 WL 403401.

[741] *See* 47 U.S.C. § 252(e)(6) ("In any case in which a State Commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section").

[742] *See, e.g., U S WEST v. Jennings, et al.*, Civ. Nos. 97-0026, 97-0027 (D. Ariz. filed Jan. 7, 1997) (challenging, *inter alia*, Arizona commission's resale and transport and termination pricing determinations); *GTE v. Conlon, et al.*, Civ. No. 97-0061 (E.D. Cal. filed Jan. 31 1997) (challenging, *inter alia*, California

ultimately, the Supreme Court, will resolve the issue of what the statutory requirement that rates be cost-based means. This litigation will take years, however, and inevitably will run the risk of impeding or significantly delaying the development of competition in the local exchange market, and, consequently, delaying the deregulation of the telecommunications markets that Congress envisioned.

285. While the question of what constitutes cost-based pricing under section 252(d) wends it way through the courts, the Commission, pursuant to section 271, must determine whether the BOCs have fully implemented the competitive checklist, which incorporates the section 252(d) cost-based standard. The BOCs will file section 271 applications in the meantime, and the Commission is obligated by section 271 to issue a written determination approving or denying the authorization requested not later than 90 days after receiving an application.[743]

286. The cost-based standard is contained in a federal statute. It is, therefore, presumed to have a uniform meaning nationwide.[744] As the Supreme Court has often stated, "federal statutes are generally intended to have uniform nationwide application."[745] Moreover,

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commission's use of forward looking cost methodology); *AT&T v. BellSouth, et al.*, Civ. No. 97-130 (N.D. Fla. filed April 18, 1997) (alleging, *inter alia*, state commission erred in not deaveraging prices for unbundled network elements); *AT&T v. U S WEST, et al.*, Civ. 97-917 (D. Minn. filed April 16, 1997) (same); *Southwestern Bell Telephone Col. v. McKee, et al.*, Civ. No. 97-2197 (D. Kan. filed April 11, 1997) (challenging, *inter alia*, state commission's resale price discount); *Southwestern Bell Telephone v. Zobrist, et al.*, Civ. No. 97-0140 (W.D. Mo. filed Feb. 6, 1997) (alleging, *inter alia*, state commission improperly relied on TELRIC methodology); *MCI Telecommunications Corp. v. Southwestern Bell Telephone Co., et al.*, Civ. No. 97-132 (W.D. Tex. filed Feb. 28, 1997) (alleging, *inter alia*, state commission erred in not using forward looking cost methodology). GTE has filed suits in numerous states, including Michigan, alleging, *inter alia*, that the rates established by state commissions in arbitrations for unbundled network elements and interconnection improperly preclude GTE from recovering historical costs. *See, e.g., GTE v. Strand, et al.*, Civ. No. 97-20 (W.D. Mich. filed Feb 25, 1997); *GTE v. Johnson et al.*, Civ. No. 4:97CV26 (N.D. Fla. filed Jan. 31, 1997); *GTE v. Naito, et al.*, Civ. No. 97-00162 (D. Haw. filed Feb. 14, 1997); *GTE v. Miller, et al.*, Civ. No. 96-1584 (C.D. Ill. filed Dec. 19, 1996); *GTE v. Mortell, et al.*, Civ. No. 97-0066 (N.D. Ind. filed Feb. 20, 1997); *GTE v. Breathitt, et al.*, Civ. No. 97-7 (E.D. Ky. filed Jan. 29, 1997); *GTE v. Zobrist, et al.*, Civ. No. 97-0193 (W.D. Mo. filed Feb. 19, 1997).

[743] 47 U.S.C. § 271(d)(3).

[744] *See, e.g., U.S. v. Phipps*, 68 F.3d 159, 161 (7th Cir. 1995) ("Language in federal statutes and regulations usually has one meaning throughout the country").

[745] *See, e.g., Mississippi Bank of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43 (1989) (citations omitted); *see also Jerome v. United States*, 318 U.S. 101, 104 (1943). Occasionally, the federal courts have concluded that an ambiguous federal statutory term was to be given meaning by reference to state law. *See, e.g., De Sylva v. Ballentine*, 351 U.S. 570 (1956); *Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204 (1946). But that approach has been applied only in cases in which the ambiguous federal statutory term is a familiar state law term with a history of state law jurisprudence interpreting it. Indeed, it is only in such cases that the issue of

there is nothing in section 271 to suggest that the Commission's bases for determining checklist compliance should be vary throughout the country. The Commission, pursuant to its responsibility under section 271, therefore must apply uniform principles to give content to the cost-based standard in the competitive checklist for each state-by-state section 271 application.

287. Such a reading of our responsibilities under section 271 is also sound policy. Determining cost-based rates has profound implications for the advent of competition in the local markets and for competition in the long distance market. Because the purpose of the checklist is to provide a gauge for whether the local markets are open to competition, we cannot conclude that the checklist has been met if the prices for interconnection and unbundled elements do not permit efficient entry. That would be the case, for example, if such prices included embedded costs. Moreover, allowing a BOC into the in-region interLATA market in one of its states when that BOC is charging noncompetitive prices for interconnection or unbundled network elements in that state could give that BOC an unfair advantage in the provision of long distance or bundled services.

288. We believe that Congress did not intend us to be so constrained in conducting our prescribed assessment of checklist compliance in section 271. We conclude that Congress must have intended the Commission, in addressing section 271 applications, to construe the statute and apply a uniform approach to the phrase "based on cost" when assessing BOC compliance with the competitive checklist. We will consider carefully the state commission's assessment of pricing contained in its checklist compliance verification, the methodology used to derive prices for checklist items, and the allegations of interested parties in the section 271 proceeding. It is our understanding that a large majority of state commissions have stated that they have adopted or intend to adopt forward-looking economic cost approaches. Our ultimate objective, for the purpose of section 271 compliance, is to determine whether the BOC's prices for checklist items in fact meet the relevant statutory requirements. We note, moreover, that even if it were decided that we lacked authority to review BOC prices as an aspect of our assessment of checklist compliance under section 271(d)(3)(A), we would certainly consider such prices to be a relevant concern in our public interest inquiry under section 271(d)(3)(C). We discuss below our conclusions concerning the appropriate pricing for these checklist items.

289. TELRIC-Based Pricing of Interconnection Services, Unbundled Network Elements, and Transport and Termination. In ascertaining whether a BOC has complied with the competitive checklist regarding pricing for interconnection, unbundled network elements, and transport and termination pursuant to section 251, it is critical that prices for these inputs be set at levels that encourage efficient market entry. New entrants should make their

national uniformity is even raised; in all other cases involving ambiguous federal statutory terms, national uniformity is simply taken for granted. The general rule plainly applies here.

decisions whether to purchase unbundled elements or to construct facilities based on the relative economic costs of these options. New entrants cannot make such decisions efficiently unless prices for unbundled elements are based on forward-looking economic costs. Similarly, prices for interconnection and transport and termination must be based on forward-looking economic costs in order to encourage efficient entry. In order for competition to drive retail prices to cost-based levels, as occurs in efficient, competitive markets, new entrants must be able to purchase interconnection services, unbundled network elements, and transport and termination at rates that reflect forward-looking costs. Adopting a pricing methodology based on forward-looking costs best replicates, to the extent possible, the conditions of a competitive market. In addition, a forward-looking cost methodology reduces the ability of an incumbent to engage in anticompetitive behavior, permits new entrants to take advantage of the incumbent's economies of scale, scope, and density, and encourages efficient market entry and investment by new entrants. We conclude, therefore, that a BOC cannot be deemed in compliance with sections 271(c)(2)(B)(i), (ii), and (xiii) of the competitive checklist unless the BOC demonstrates that prices for interconnection required by section 251, unbundled network elements, and transport and termination are based on forward-looking economic costs.

290. We have previously set forth our view that the requirement for the use of foward-looking economic costs is to be implemented through a method based on total element long-run incremental cost or TELRIC. TELRIC principles ensure that the prices for interconnection and unbundled network elements promote efficient entry decisions. Pursuant to TELRIC principles, prices for interconnection and unbundled network elements recover the forward-looking costs over the long run directly attributable to the specified element, as well as a reasonable allocation of forward-looking common costs.[746] TELRIC pricing also specifically provides for a reasonable profit.[747] We conclude that, for purposes of checklist compliance, prices for interconnection and unbundled network elements must be based on TELRIC principles. We emphasize, however, that it is not the label that is critical in making our assessment of checklist compliance, but rather what is important is that the prices reflect TELRIC principles and result in fact in reasonable, procompetitive prices. It is our understanding that the large majority of state commissions have stated that they have adopted or intend to adopt forward-looking economic cost approaches. For instance, the principles

[746] Section 252(d)(2) states that reciprocal compensation rates for transport and termination shall be based on "a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. § 252(d)(2)(A)(ii). The determination of "additional costs" of transport and termination must also be based on TELRIC principles.

[747] TELRIC includes what is called "normal" profit, which is the total revenue required to cover all of the costs of a firm, including its opportunity costs. The concept of normal profit is embodied in forward-looking costs because the forward-looking costs of capital, that is, the cost of obtaining debt and equity financing, is one of the forward-looking costs of providing the network elements. This forward-looking cost of capital is equal to a normal profit.

that the Michigan PSC applied in its recent decision on permanent prices for interconnection appear to be fully consistent with TELRIC principles.[748]

291. We recognize that use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC may vary from state to state. Costs may vary, for example, due to differences in terrain, population density, and labor costs from one state to the next. TELRIC principles will not generate the same price in every state; indeed it will not even generate the same formula for pricing in every state. But such principles are fair and procompetitive and should create even opportunities for entry in every state, while permitting, indeed obliging, each state commission to determine prices on its own.[749] In order for us to conduct our review, we expect a BOC to include in its application detailed information concerning how unbundled network element prices were derived.

292. Establishing prices based on TELRIC is a necessary, but not sufficient, condition for checklist compliance. In order for us to conclude that sections 271(c)(2)(B)(i) and (ii) are met, rates based on TELRIC principles for interconnection and unbundled network elements must also be geographically deaveraged to account for the different costs of building and maintaining networks in different geographic areas of varying population density. Deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements. Deaveraging should, therefore, lead to increased competition and ensure that competitors make efficient entry decisions about whether they will use unbundled network elements or build facilities.

293. There also must be "just and reasonable" reciprocal compensation for the transport and termination of calls between an incumbent's and a new entrant's network.[750] In order for us to find that the statutory standard has been met for section 271(c)(2)(B)(xiii), the rates not only must be based on TELRIC principles, but new entrants and BOCs must also each be compensated for use of the other's network for transport and termination.

294. Finally, we believe that it is important to our assessment of checklist compliance to know the basis for the prices submitted by the BOC in the application. In

[748] *See Michigan Rate Proceeding. See also, supra* note 152

[749] We note that Ameritech states that its arbitrated rates for unbundled network elements, interconnection, local transport and termination, and collocation, "are, in fact, lower than a conservative estimate of forward-looking economic costs determined in accordance with the Commission's now-stayed pricing rules." *See* Ameritech Application at 35 n.37. As we previously indicated, we urge the Michigan Commission and the Department of Justice to address Ameritech's compliance with TELRIC principles when Ameritech refiles its application.

[750] *See* 47 U.S.C. § 252(d)(2).

particular, we would want to know whether those prices were based on completed cost studies, as opposed to interim prices adopted pending the completion of such studies.

295. Pricing for Resold Services. We conclude that a BOC cannot demonstrate compliance with the competitive checklist unless it has appropriate rates for resale services, which the Act defines as "wholesale rates [based on] retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."[751] Accordingly, resellers should not be required to compensate a BOC for the cost of services, such as marketing, that resellers perform. Moreover, just as recurring wholesale rates should not reflect reasonably avoidable costs, neither should non-recurring charges associated with the service being resold reflect costs that would be reasonably avoidable if the BOC were no longer to offer the service on a retail basis. We will not consider a BOC to be in compliance with section 271(c)(2)(B)(xiv) of the competitive checklist unless the BOC demonstrates that its recurring and non-recurring rates for resold services are set at the retail rates less the portion attributable to reasonably avoidable costs.

296. Non-recurring Charges. Unreasonably high non-recurring charges for unbundled loops and other essential inputs can have as much of a chilling effect on local competition as unreasonably high recurring fees. Both types of charges must be cost-based in order for local competition to take root and flourish. Non-recurring charges may be assessed in the provision of unbundled network elements and interconnection (in providing collocation, for example), and in the provision of resale. Consequently, we conclude that a BOC will not be deemed in compliance with sections 271(c)(2)(B)(i),(ii) and (xiv) of the competitive checklist unless it has shown that its non-recurring charges reflect forward-looking economic costs.[752]

297. Continuing Compliance. We must be confident that a BOC will continue to comply with the pricing requirements contained in the competitive checklist after it has been authorized to provide in-region interLATA service. We anticipate, therefore, that it may be necessary to require, as a condition of authorization, that the BOC continue to price interconnection, unbundled network elements, transport and termination, and resold services in accordance with the competitive checklist as we have described above if it wishes to remain in the long distance market. Imposition of such conditions may be particularly important where we anticipate continuing negotiations with individual carriers over pricing terms and

[751] *Id.* § 252(d)(3).

[752] With regard to non-recurring charges associated with services made available for resale, charges that have a retail equivalent are to be priced based on the avoided cost standard in section 252(d)(2) as discussed in the preceding paragraph. Non-recurring charges associated with resale that have no retail equivalent, *e.g.*, development of billing systems for resellers, however, should be based on forward-looking economic costs as discussed in this paragraph.

conditions such as non-recurring charges. We believe that we have authority to impose such conditions pursuant to sections 271(d)(6) and 303(r) of the Communications Act.[753]

2. Unbundled Local Transport

a. Introduction

298. Section 271(c)(2)(B)(v) of the competitive checklist requires Ameritech to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[754] The checklist further requires Ameritech to provide [n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[755] In the *Local Competition Order*, the Commission required incumbent LECs to provide requesting telecommunications carriers with access to both dedicated and "shared" interoffice transmission facilities as an unbundled network element pursuant to section 251(c)(3).[756]

299. There was significant controversy in this proceeding concerning whether Ameritech's shared transport offerings satisfy the requirements of section 251(c)(3) and our

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[753] 47 U.S.C. §§ 271(d)(6), 303(r); *see also infra* Section IX (discussing the Commission's authority to impose conditions).

[754] 47 U.S.C. § 271(c)(2)(B)(v).

[755] *Id.* § 271(c)(2)(B)(ii).

[756] *Local Competition Order*, 11 FCC Rcd at 15718. 47 C.F.R. § 51.319(d)(2) states:

> The incumbent LEC shall:
>
> (i) Provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or *use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier*;
>
> (ii) Provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;
>
> (iii) Permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities . . . .

47 C.F.R. § 51.319(d)(2) (emphasis added).

implementing regulations, as mandated by sections 271(c)(2)(B)(ii) and (v) of the Act.[757] In light of our conclusions in this Order that Ameritech has failed to satisfy other checklist requirements of section 271(c)(2)(B), we need not reach this issue. As discussed below, we believe, however, that Ameritech is not in compliance with the requirements that were established in the *Local Competition Order*.

300. Since the release of the *Local Competition Order*, moreover, the Commission has, on reconsideration, clarified the incumbent LECs' obligation to provide shared transport pursuant to section 251(c)(3) of the Act. Although the *Local Competition Order* clearly required incumbent LECs to provide shared transport between incumbent LEC end offices and the tandem switch, the order was not clear on all other portions of the network to which the shared transport obligation applied. As discussed below, the Commission, on reconsideration in the *Local Competition Third Reconsideration Order*, concluded that incumbent LECs are required to provide "shared transport among all end offices or tandem switches in the incumbent LEC's network (*i.e.*, between end offices, between tandems, and between tandems and end offices)."[758] We also concluded that "a requesting carrier may use the shared transport unbundled element to provide exchange access service to customers for whom the carrier provides local exchange service." In this Order, we are not evaluating Ameritech's application against the requirements the Commission established in the *Local Competition Third Reconsideration Order*. We note, however, that all BOCs, including Ameritech, are now on notice as to the clarified shared transport obligations and are required to comply with the revised rules prior to filing any future applications for interLATA entry pursuant to section 271 of the Act.[759]

b. Background

301. Section 251(c)(3) of the Act requires incumbent LECs to "provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis."[760] In the *Local Competition Order*, the Commission identified seven network elements that incumbent LECs were required to provide to requesting carriers on an unbundled basis. These network elements included unbundled local switching and interoffice transmission facilities. In *Iowa Utilities Board v. FCC*, the United States Court of Appeals for the Eighth Circuit, while vacating certain provisions of the *Local Competition Order*,

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[757] Section 51.319(d) of the Commission's rules requires that incumbent LECs provide access on an unbundled basis to interoffice transmission facilities shared by more than one customer or carrier. 47 C.F.R. § 51.319(d). In this Order, we refer to such shared interoffice transmission facilities as "shared transport."

[758] *Local Competition Third Reconsideration Order*, FCC 97-295 (rel. August 18, 1997).

[759] *Id.* at paras. 24-25, 31-34, 39-49.

[760] 47 U.S.C. § 251(c)(3).

affirmed the Commission's authority to identify network elements to which incumbent LECs must provide access on an unbundled basis.[761]

302. In the *Local Competition Order,* the Commission defined "interoffice transmission facilities" as:

> incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. [762]

The Commission stated that, "[f]or some elements, especially the loop, the requesting carrier will purchase exclusive access to the element for a specific period," and for "other elements, especially shared facilities such as common transport, carriers are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis."[763] The Commission found that "the embedded features and functions within a network element are part of the characteristics of that element and may not be removed from it. Accordingly, incumbent LECs must provide network elements along with all of their features and functions, so that new entrants may offer services that compete with those offered by incumbents as well as new services."[764]

303. Ameritech contends that the Act defines "network element" as "a facility or equipment" used to provide a telecommunications service.[765] Ameritech states that a network element also includes features, functions, and capabilities that are provided by "such facility or equipment."[766] Ameritech claims, however, that, in order to obtain a feature, function, or capability of a network element, the requesting carrier must first designate a discrete facility or piece of equipment, in advance.[767]

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[761] *Iowa Utils. Bd.*, 1997 WL 403401, at *27-28.

[762] *Local Competition Order*, 11 FCC Rcd at 16210-11; 47 C.F.R. § 51.319(d)(1).

[763] *Local Competition Order*, 11 FCC Rcd at 15631.

[764] *Id.* at 15632. That determination was affirmed by the Eighth Circuit. *Iowa Utils. Bd.*, 1997 WL 403401, at *18-22.

[765] Ameritech Application, Vol. 2.3, Edwards Aff. at 46.

[766] *Id.*, Vol. 2.3, Edwards Aff. at 46.

[767] *Id.*, Vol. 2.3, Edwards Aff. at 46

304. Several competitive carriers and the Department of Justice dispute Ameritech's assertion that unbundled network elements are limited to a discrete facility or piece of equipment.[768] These competitive carriers further contend that Ameritech is not offering shared transport as required by the Commission's rules. These carriers argue that Ameritech's view of shared transport is transport shared among competitive carriers only, not transport shared with Ameritech.[769] These commenters further assert that Ameritech's view of shared transport violates the requirements of our *Local Competition Order*.[770] CompTel, for example, contends that the Commission's rules require incumbent LECs to provide shared interoffice transmission facilities on an unbundled basis to requesting carriers. CompTel claims that this includes the right to share the transport facilities that Ameritech uses to provide service to its own subscribers.[771]

305. In the *Local Competition Order*, we concluded that the requirement that incumbent LECs provide access to shared transport on an unbundled basis encompassed the sharing of facilities between the incumbent LEC and requesting carriers, and not just, as Ameritech asserts, sharing among requesting carriers.[772] The *Local Competition Order* thus requires incumbent LECs to offer requesting carriers access, on a shared basis, to the same

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[768] *See, e.g.*, AT&T Comments, Vol. IX, Tab J, Falcone and Sherry Aff. at 10 ("Under neither of Ameritech's tranport proposals does a CLEC obtain unbundled access to the full functionality of Ameritech's transport network . . ."); MCI Comments at 27-28 ("Ameritech continues to refuse to provide at cost-based rates *common* transport over the same trunks that carry Ameritech's traffic. . . . Ameritech's refusal to provide common transport forces CLECs to purchase dedicated transport between specified points, rather than terminating traffic throughout Ameritech's network on a call-by-call basis, and thus prevents CLECs from reaching new customers in the most cost-effective manner."); Department of Justice Evaluation at 14 ("The Commission's Local Competition Order specifically allowed new entrants to 'purchase all interoffice facilities on an unbundled basis as part of a competiting local network,' or 'combine its own interoffice facilities with those of the incumbent LEC.'").

[769] MFS WorldCom Comments at 22; AT&T Comments at 11.

[770] AT&T Comments at 11; Department of Justice Evaluation at 12; MCI Comments at 27-28; MFS WorldCom Comments at 22.

[771] CompTel Comments at 21.

[772] In the *Local Competition Order*, the Commission stated that with "shared facilities such as common transport, [carriers] are essentially purchasing access to a functionality of the incumbent's facilities on a minute-by-minute basis." *Local Competition Order*, 11 FCC Rcd at 15631. The Commission also stated in its rules that incumbent LECs must provide access to transport facilities "shared by more than one customer or carrier." 47 C.F.R. § 51.319(d)(2)(i). The term "carrier" includes both an incumbent LEC as well as a requesting telecommunications carrier. Moreover, the Commission required incumbent LECs to provide access to other network elements, such as signalling, databases, and the local switch, which are shared among requesting carriers and incumbent LECs, consistent with our view that transport facilities "shared by more than one customer or carrier" must be shared between the incumbent LECs and requesting carriers. *Id.* at 15705-13, 15738-46.

interoffice transport facilities that the incumbent LEC uses for its own traffic, between the incumbents' end offices and tandems.

306. In the *Local Competition Third Reconsideration Order*, we affirmed that the our initial *Local Competition Order* requires incumbent LECs to provide requesting carriers with access to the same transport facilities, between the end office switch and the tandem switch, that incumbent LECs use to carry their own traffic. We further affirmed that, when a requesting carrier obtains local switching as an unbundled network element, it is entitled to gain access to all of the features and functions of the switch, including the routing table resident in the incumbent LEC's switch. In that order, we also reconsidered the requirement that incumbent LECs only provide "shared transport" between the end office and tandem. On reconsideration, we concluded that incumbent LECs should be required to provide requesting carriers with access to shared transport for all transmission facilities connecting incumbent LECs' switches -- that is, between end office switches, between an end office switch and a tandem switch, and between tandem switches. We further reaffirmed our conclusion in the *Local Competition Order* that incumbent LECs must permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the incumbent LEC's switch. We further concluded that the incumbent LEC must provide access not only to the routing table in the switch but also to the transport links that the incumbent LEC uses to route and carry its own traffic.[773] By requiring incumbent LECs to provide requesting carriers with access to the incumbent LEC's routing table and to all its interoffice transmission facilities on an unbundled basis, we ensure that requesting carriers can route calls in the same manner that an incumbent routes its own calls and thus take advantage of the incumbent LEC's economies of scale, scope, and density. Finally, we required that incumbent LECs permit requesting carriers to use shared transport as an unbundled element to carry originating access traffic from, and terminating access traffic to, customers to whom the requesting carrier is also providing local exchange service.[774]

c. Ameritech's Transport Offerings

307. Ameritech contends that it offers both shared and dedicated transport as a network element. It states that it offers dedicated transport at a flat monthly rate, and that it offers three "pricing options" that satisfy its obligation to provide "shared transport." First, Ameritech offers "a flat-rate circuit capacity charge based on the pro-rata capacity of the shared facility."[775] According to Ameritech, this option "required use of dedicated facilities at

[773] *Local Competition Third Reconsideration Order*, at para. 26.

[774] *Id.* at paras. 38-39.

[775] Ameritech Application, Vol. 2.3, Edwards Aff. at 43, 47-48.

a DS1 or higher level for direct connections to other end offices or to a tandem on either a dedicated or shared basis with other [requesting] carriers."[776]

308. Second, Ameritech states that it offers an option it calls "Shared Company Transport" that permits requesting carriers to "obtain dedicated transport services at less than the DS1 level."[777] Ameritech states that it offers Shared Company Transport with two billing options: a flat rate per trunk monthly charge that is 1/24th of the DS1 rate, and a usage sensitive option, based on minutes of use.[778] In conjunction with Shared Company Transport, Ameritech states that it will make available single activated trunk port increments up to a total of 23, so that purchasers of Shared Company Transport do not have to pay for a full DS1 trunk port.[779]

309. Third, Ameritech states that it offers a per-minute-of-use option under its FCC Tariff No. 2, section 6.9.1 (switched transport).[780] Ameritech claims that no competing carriers have "properly" ordered unbundled local transport pursuant to their interconnection agreements.[781] Rather, Ameritech asserts that it "currently is furnishing local transport to Brooks Fiber, MFS and TCG under Ameritech's access tariff, along with other services included in that tariff."[782] Ameritech further asserts that "the transport service under Ameritech's access tariff is identical to unbundled local transport . . . ."[783]

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[776] *Id.*, Vol. 2.3, Edwards Aff. at 47-48.

[777] Shared Company Transport enables requesting carriers that purchase unbundled local switching to obtain up to 23 dedicated trunks between any two Ameritech offices. At 24 trunks, a requesting carrier would subscribe to a DS1. A DS1 provides the equivalent of 24 voice-grade circuits. *Id.*

[778] *Id.* at 48-49. According to Ameritech, the minute-of-use option is based on TELRIC transport rates that apply under reciprocal compensation arrangements for traffic terminated through a tandem, including per-minute termination charges and per-mile per-minute facility mileage charges. *Id.* AT&T maintains that the MOU price "would not be a TELRIC-based charge," but rather, "would be the same as the reciprocal compensation rates approved in the AT&T arbitration agreement for traffic terminating through a tandem, including per-MOU termination charges and per mile/per MOU transport facility mileage charges." AT&T Reply Comments, Vol. IX, Tab J, Falcone and Sherry Aff. at 9.

[779] Ameritech Application, Vol. 2.3, Edwards Aff. at 49. Each activated trunk port will be priced at 1/24th of the DS1 port charge. *Id.*

[780] *Id.* at 43.

[781] Ameritech Application at 45. *See also id.*, Vol. 2.3, Edwards Aff., Schedule 2 at 5.

[782] Ameritech Application at 36, 45, and Vol. 2.3, Edwards Aff. at 44-45.

[783] *Id.* Vol. 2.3, Edwards Aff. at 44-45.

310. Finally, Ameritech contends that, contrary to the claims of some requesting carriers, it is not required to provide what it calls "common transport" as a network element.[784] According to Ameritech, "common transport" is a service, not a discrete network element, because it "is in fact undifferentiated access to transport and switching blended together."[785] Ameritech adds that it "stands ready to provide this service when ordered as such, but not as an unbundled element."[786]

d. Discussion

311. Ameritech does not dispute that it is required to provide both shared and dedicated transport in order to satisfy its obligations under the competitive checklist. For the reasons given below, we conclude that Ameritech's current shared transport offerings do not satisfy the obligation of incumbent LECs to provide shared transport.[787] The three options that Ameritech offers do not constitute shared transport as defined in the *Local Competition Order* and the *Local Competition Third Reconsideration Order*.

312. The first option, under which a requesting carrier uses, and pays for, an entire transport facility, does not constitute shared transport, because, as Ameritech concedes, this option does not permit requesting carriers to use the same transport facilities that Ameritech uses to transport its own traffic.[788] Thus, this option does not comply with the definition of "shared" transport set forth in the *Local Competition Order* and clarified in the *Local Competition Third Reconsideration Order*.[789] The only distinction between Ameritech's first "shared" transport option and dedicated transport is that Ameritech would act as the billing agent for multiple requesting carriers that use a dedicated transport facility, rather than assess the entire cost of the transport facility to a single requesting carrier.

313. Ameritech's second option, "Shared Company Transport," appears to be almost identical to Ameritech's first "shared" transport option and suffers from the same flaws. The

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[784] *Id.* at 45 n.50, and Vol. 2.3, Edwards Aff. at 45-48; Ameritech Reply Comments, Vol. 5R.6, Edwards Reply Aff. at 26-40.

[785] Ameritech Application, Vol. 2.3, Edwards Aff. at 45-46. *See also id.* at 45 n.50; Ameritech Reply Comments at 18.

[786] Ameritech Reply Comments at 18.

[787] We do not reach the issue of whether Ameritech has satisfied its obligation to offer dedicated transport as a network element.

[788] *See* Ameritech Application, Vol. 2.3, Edwards Aff. at 47-48 (conceding that, "[a]s originally proposed, any sharing would have been between other carriers but not with Ameritech").

[789] *See supra* para. 302.

only substantive difference that Ameritech has identified is that, under Shared Company Transport, requesting carriers may obtain access to dedicated facilities that are divided into units smaller than a DS1 capacity trunk. Ameritech also states that it will provide Shared Company Transport either on a flat-rated or a minute-of-use basis.[790] The method of pricing is not dispositive to determining whether a facility is shared or dedicated, however.[791] The cost of a dedicated facility may be recovered through a flat-rate charge or through a minute-of-use charge that is based on the cost of the dedicated facility divided by the estimated average minutes the facility will be used.[792] Whether the cost of a dedicated transport facility is recovered on a flat-rated or minute-of-use basis does not therefore change the fact that the facility is dedicated to the use of a particular customer or carrier. In fact, Ameritech itself describes Shared Company Transport as access to "*dedicated transport* services at less than the DS1 level."[793] As we explained above, however, shared transport facilities are transport facilities that are shared among the incumbent LEC and requesting carriers.[794] We thus conclude that Ameritech's Shared Company Transport option constitutes dedicated transport, and fails to meet Ameritech's obligation to provide unbundled shared transport for the same reasons as Ameritech's first option.

314. Ameritech suggests, but does not affirmatively contend, that requesting carriers that purchase Shared Company Transport use the same transport facilities that Ameritech uses to transport its own traffic.[795] Ameritech does not assert, however, that, under this option, requesting carriers can use the same DS-0 level transmission paths as Ameritech or the same trunk ports as Ameritech. In fact, as we previously noted, Ameritech concedes that under this option, requesting carriers would obtain "dedicated transport services."[796] Accordingly, we reiterate our finding that Ameritech's Shared Company Transport does not fall within the

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[790] Ameritech does not explain how or on what basis it will determine usage-sensitive charges.

[791] For example, our original pricing rule regarding shared transport permitted rates to be based either on a minute-of-use basis, or in another manner consistent with the manner in which costs are incurred. 47 C.F.R. § 51.509(d). We note, however, that we are not addressing the issue of whether both cost recovery methods that Ameritech offers represent efficient rate structures for the recovery of the costs of dedicated facilities.

[792] For example, our access charge rules estimate a "loading factor of 9,000 minutes per month per voice-grade circuit" for certain transport facilities. 47 C.F.R. § 69.111.

[793] Ameritech Application, Vol. 2.3, Edwards Aff. at 47-48. (emphasis added).

[794] *See supra* para. 305.

[795] Ameritech states that, "as *originally* proposed, any sharing would have been between other carriers, but not with Ameritech." Ameritech Application, Vol. 2.3, Edwards Aff. at 47-48 (emphasis added). The original proposal referenced is presented as a comparison to Ameritech's Shared Company Transport option.

[796] *Id.*, Vol. 2.3, Edwards Aff. at 47-48.

definition of shared transport, as required by our *Local Competition Order* and the *Local Competition Third Reconsideration Order*.

315. As a third option, Ameritech contends that its tariffed "switched transport" access service also satisfies its obligation to provide shared transport.[797] Ameritech further asserts that it currently provides what it refers to as "common transport" in the form of tariffed wholesale and access usage services.[798] Ameritech argues at length, however, that it is not required to provide such services under section 251(c)(3).[799] Ameritech nevertheless asserts that, if required to provide its access service (in the form of "common transport") as a network element, it "is both committed and operationally ready to do whatever the law requires."[800]

316. We find that Ameritech's tariffed "switched transport" access service does not satisfy its obligation to provide shared transport as an unbundled network element in accordance with the competitive checklist. Ameritech concedes that it does not currently offer its access service as a network element, but rather as a service.[801] We find that Ameritech's obligation to provide access to shared transport as a network element is independent of, and in addition to, any service it may offer.[802] Therefore, until Ameritech demonstrates that it offers its access service in accordance with sections 251(c)(3) and 252(d)(1), it cannot rely on that service to demonstrate compliance with subsections (ii) and (v) of the competitive checklist.

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[797] Ameritech relies on its tariffed access service to show that it satisfies its obligation to provide shared transport, but also notes that it provides shared transport in the form of wholesale usage service. *See id.*, Vol. 2.3, Edwards Aff. at 44-45. Ameritech further asserts that "an access tariff is by definition a wholesale tariff." Ameritech Reply Comments, Vol. 5R.6, Edwards Reply Aff. at 37.

[798] Ameritech Reply Comments at 21; Ameritech Application, Vol. 2.3, Edwards Aff. at 45-46.

[799] *See, e.g.*, Ameritech Reply Comments at 18-21, and Vol. 5R.6, Edwards Reply Aff. at 26-40. *See also* Ameritech Application at 45 n.50 (Ameritech "stands ready to provide this service when ordered as such, *but not as an unbundled element*") (emphasis added).

[800] Ameritech Reply at 21.

[801] Ameritech Application at 45 n.50.

[802] The Eighth Circuit, in affirming several of the Commission's unbundling rules, stated that, "[s]imply because these capabilities can be labeled as 'services' does not convince us that they were not intended to be unbundled as network elements." *Iowa Utils. Bd.*, 1997 WL 403401, at *21. The court stated that, even though section 251(c)(4) provides for the resale of services, "in some circumstances a competing carrier may have the option of gaining access to features of an incumbent LEC's network through either unbundling or resale." *Id.* Based on the record in this proceeding, however, we find that Ameritech has not demonstrated that its wholesale or access service tariffs satisfy the requirements of sections 251(c)(3) and 252(d)(1).

317. Even assuming that Ameritech were offering its "switched transport" access service as a network element, we find that Ameritech has not demonstrated that this service complies with the competitive checklist. In particular, Ameritech has presented no evidence that its "switched transport" access service satisfies the requirement, set forth in section 252(d)(1) (as required by subsection (ii) of the competitive checklist) that the rates for unbundled network elements be "based on the cost . . . of providing the . . . network element."[803] Moreover, because Ameritech offers "switched transport" as a service, rather than a network element, it does not permit requesting carriers that use "switched transport" to collect access charges for exchange access service provided over the transport facilities.[804] In the *Local Competition Order*, however, we concluded that requesting carriers that provide exchange access service over network elements are entitled to collect access charges associated with those network elements.[805] Contrary to Ameritech's contention,[806] we find that this is relevant to determining whether Ameritech satisfies the competitive checklist, and in particular, subsection (ii) of the checklist. Section 251(c)(3), and by implication, subsection (ii) of the checklist, require incumbent LECs to provide access to network elements "in a manner that allows requesting carriers to combine such elements in order to provide" a telecommunications service.[807] Ameritech's refusal to permit requesting carriers that purchase its "switched transport" service to provide exchange access service (and collect access charges) as well as local exchange service over its transport facilities violates the requirement that incumbent LECs provide access to unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services, including exchange access service.

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[803] *See generally supra* Section VI.F.1. Even if Ameritech's tariff for interstate switched transport service has satisfied the requirements of sections 201 and 202 that rates be just and reasonable and not unjustly or unreasonably discriminatory, it has not necessarily satisfied the requirements of sections 251 and 252 that the price of an unbundled network element must be "just, reasonable, and nondiscriminatory" and "based on the cost" of providing the element. 47 U.S.C. §§ 201, 202, 251(c)(3), 252(d)(1).

[804] Although Ameritech recognizes that requesting carriers that use shared transport as a network element are entitled to collect access charges if they provide exchange access service using those transport facilities, Ameritech does not extend this conclusion to requesting carriers that use "switched transport" access service. Ameritech Application, Vol. 2.3, Edwards Aff. at 50-51; *see also* Ameritech Reply Comments at 21-22.

[805] *Local Competition Order*, 11 FCC Rcd at 15682 n.772. *See also Local Competition Third Reconsideration Order* at para. 36.

[806] Ameritech Reply Comments at 21.

[807] 47 U.S.C. § 251(c)(3). As we said in the *Local Competition Order*, this language in section 251(c)(3) "bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements that would impair the ability of requesting carriers to offer telecommunications services in the manner they intend." *Local Competition Order*, 11 FCC Rcd at 15646. *See also* 47 C.F.R. § 51.315(b) ("Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines"); *Iowa Utils. Bd.*, 1997 WL 403401, at *32 (affirming 47 C.F.R. § 51.315(b)).

318. As set forth in its application, none of the options discussed in Ameritech's application permits requesting carriers to obtain nondiscriminatory access to shared transport, that is, access to the same interoffice transport facilities that Ameritech uses to transport traffic between end offices and tandem switches. After examining all of Ameritech's offerings, we find that none of Ameritech's current shared transport offerings meets subsections (ii) and (v) of the competitive checklist.

3. Local Switching Unbundled from Transport, Local Loop Transmission, or Other Services

a. Introduction

319. Section 271(c)(2)(B)(vi) of the Act, item (vi) of the competitive checklist, requires a section 271 applicant to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[808] In addition, section 271(c)(2)(B)(ii) of the Act, item (ii) of the competitive checklist, requires section 271 applicants to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."[809] Section 251(c)(3) establishes an incumbent LEC's "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252." That section further provides that an incumbent LEC "shall provide such unbundled elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."[810] Because we concluded in our *Local Competition Order* that "incumbent LECs must provide local switching as an unbundled network element,"[811] to fully implement items (ii) and (vi) of the competitive checklist, an incumbent LEC must provide nondiscriminatory access to unbundled local switching.

320. In our *Local Competition Order*, we defined unbundled local switching to include "line-side and trunk-side facilities plus the features, functions, and capabilities of the

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[808] 47 U.S.C. § 271(c)(2)(B)(vi); *see also* 47 C.F.R. § 51.319(c).

[809] 47 U.S.C. § 271(c)(2)(B)(ii).

[810] *Id.* § 251(c)(3). Section 252(d)(1) states that "the just and reasonable rate for the interconnection of facilities and equipment . . . shall be . . . based on the cost . . . of providing the interconnection . . . and . . . nondiscriminatory, and . . . may include a reasonable profit." *Id.* § 252(d)(1).

[811] *Local Competition Order*, 11 FCC Rcd at 15705.

switch."[812] We explained that the features, functions, and capabilities of a "local switch include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks." Moreover, we stated that "[i]t also includes the same basic capabilities that are available to the incumbent LEC's customers, such as a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance."[813] We concluded that "the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions."[814] As we explained, "when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single element on a per-line basis."[815] We clarified, in our *Local Competition First Reconsideration Order*, that "a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user."[816] As stated above, in *Iowa Utilities Board v. FCC*, the court generally upheld the Commission's decision regarding incumbent LECs' obligations to provide access to network elements on an unbundled basis.[817]

321. Although we do not reject Ameritech's application based upon Ameritech's unbundled local switching offering, we are concerned that Ameritech has not provided this unbundled network element in a manner consistent with its obligations under sections 251 and 271 of the Act, the Commission's regulations, and our *Local Competition Third Reconsideration Order* on shared transport. As explained above and discussed in our recent order on shared transport, the Commission has concluded that shared transport is a network element and has rejected Ameritech's arguments to the contrary.[818] Ameritech has publicly committed to provide unbundled local switching in a manner consistent with the Act and the

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[812] *Id.* at 15706.

[813] *Id.*

[814] *Id.*

[815] *Id.*

[816] *Local Competition First Reconsideration Order*, 11 FCC Rcd at 13048. In our *Local Competition Order*, we concluded that telecommunications carriers purchasing unbundled network elements to provide interexchange services or exchange access services are not required to pay federal or state access charges except during a temporary transition period. *Local Competition Order*, 11 FCC Rcd at 15682.

[817] *See Iowa Utils. Bd.*, 1997 WL 403401, at *27-28.

[818] *Local Competition Third Reconsideration Order* at paras. 22, 41, 43.

Commission's requirements.[819] Accordingly, we expect that Ameritech will take the appropriate steps to provide unbundled local switching in accordance with our requirements and the terms of the Act, prior to refiling its application. We expect that the Michigan Commission and the Department of Justice will examine this issue very carefully in their consideration of Ameritech's next application for Michigan.

b. Discussion

322. In its application, Ameritech acknowledges that it does not currently furnish unbundled local switching to any of its local exchange competitors.[820] Ameritech asserts that, although no competitor has chosen to order unbundled local switching, it makes this checklist item available through its interconnection agreements and would provide it upon request.[821] The Michigan Commission agreed with these assertions and found Ameritech's unbundled local switching offering in compliance with the checklist requirements.[822] Several potential competitors, including MCI, AT&T, and LCI, assert that they have sought unbundled switching, in connection with other elements, when requesting interconnection agreements.[823] They contend that Ameritech is not "providing" unbundled local switching for a variety of reasons, including Ameritech's refusal to allow competing LECs purchasing unbundled switching to collect access charges in some circumstances, to purchase trunk ports on a shared basis, or to access routing tables resident in the local switch.[824] The Department of Justice concluded that Ameritech has not provided unbundled local switching as a legal or a practical matter to competing LECs in Michigan.[825] Moreover, the Department of Justice found that Ameritech has not yet demonstrated its practical ability to provide unbundled local switching in the manner required by the checklist.[826]

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[819] *See, e.g.*, Ameritech Reply Comments at 21-22.

[820] Ameritech Application at 15.

[821] *Id.* at 46.

[822] *See* Michigan Commission Consultation at 40 (incorporating by reference the Michigan Commission Comments of February 5, 1997, at 33-34).

[823] *See* AT&T Comments at 8-9; LCI Comments at 1, 8-10; MCI Comments at 13, Exh. G, Sanborn Aff. at 24-27.

[824] *E.g.*, AT&T Comments at 12-14, Vol. IX, Tab J, Falcone and Sherry Aff. at 40-47; AT&T Reply Comments at 5; CompTel Comments at 18-19; MFS WorldCom Comments at 16-17.

[825] Department of Justice Evaluation at 11.

[826] *Id.* at 19-21.

323. The Department of Justice rejected Ameritech's legal position regarding what constitutes unbundled local switching largely because Ameritech does not allow competing carriers that purchase local switching to collect access charges from interexchange carriers if the competing carriers' calls are transported from an interexchange carrier's point of presence to the unbundled switch over trunks that also carry Ameritech's customers' calls.[827] Ameritech sets forth the conditions under which it would permit purchasers of unbundled local switching to collect access charges in affidavits accompanying its Brief.[828] Ameritech explains that competitors that purchase what it describes as its "Network Platform-UNE" offering may collect both originating and terminating access charges. This network configuration includes unbundled local switching in combination with unbundled interoffice transport facilities that are dedicated or "shared" with other competing LECs on a per-minute of use or per DS-O basis.[829] In contrast, Ameritech explains that competitors purchasing its "Network Combination-Common Transport Service," which Ameritech describes as "unbundled switching-line ports in conjunction with wholesale usage services," would not be entitled to collect access charges for exchange access traffic.[830]

324. Thus, Ameritech appears to take the position that unless a competing LEC that purchases the local switching element also purchases a dedicated trunk terminating on a dedicated trunk port -- *i.e.*, purchases both a line port and a dedicated trunk port on the local switch -- Ameritech is entitled to collect both originating and terminating access.[831] Pursuant to Ameritech's approach, a competing LEC can only collect terminating access if it purchases dedicated transmission facilities or transmission facilities shared only with other competing LECs.[832] This view reflects Ameritech's position that shared transport is a service, not a network element, and that, when a competing LEC purchases the shared transport service, it must likewise purchase exchange access service.

325. AT&T contends that Ameritech's position improperly ties the right of a purchaser of local switching to charge for access services to its purchase of a dedicated trunk port and dedicated transmission facilities.[833] Moreover, the interexchange carriers and

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[827] *Id.* at 11.

[828] *See* Ameritech Application, Vol. 2.3, Edwards Aff. at 56, and Vol. 2.5, Kocher Aff. at 33-35.

[829] *See* Ameritech Application, Vol. 2.3, Edwards Aff. at 56, and Vol. 2.5, Kocher Aff. at 33-35.

[830] *See* Ameritech Application, Vol. 2.3, Edwards Aff. at 56, and Vol. 2.5, Kocher Aff. at 33-35.

[831] *See* Ameritech Reply Comments, Vol. 5R.12, Kocher Reply Aff. at 21-22, 33-40.

[832] *See* AT&T Comments, Vol. IX, Tab J, Falcone and Sherry Aff. at 43.

[833] *See id.*, Vol. IX, Tab J, Falcone and Sherry Aff. at 38-39, 47. *Compare* Ameritech Reply Comments, Vol. 5R.12, Kocher Reply Aff. at 22.

competing LECs participating in this proceeding generally contend that Ameritech's position denies purchasers of local switching the right to use the entire switching capability provided by the LEC's switch, as the Commission intended.[834]

326. We conclude that Ameritech's position on unbundled local switching is contrary to section 251(c)(3) of the Act and the Commission's rules. Ameritech's definition of local switching as an unbundled network element is inconsistent with the Commission's, because Ameritech does not define unbundled local switching to include access to the "line-side and trunk-side facilities plus the features, functions, and capabilities of the switch."[835] In particular, Ameritech improperly limits the ability of competitors to use local switching to provide exchange access.[836] The Commission has established "that where new entrants purchase access to unbundled network elements to provide exchange access services, whether or not they are also offering toll services through such elements, the new entrants may assess exchange access charges to IXCs [interexchange carriers] originating or terminating toll calls on those elements."[837] Moreover, the Commission has stated that, "[i]n these circumstances, incumbent LECs may not assess exchange access charges to such IXCs because the new entrants, rather than the incumbents, will be providing exchange access services, and to allow otherwise would permit incumbent LECs to receive compensation in excess of network costs in violation of the pricing standard in section 252(d)."[838] The Commission's rules make clear that competing LECs may use unbundled network elements to provide exchange access service, as well as local exchange service.[839]

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[834] *See, e.g.*, AT&T Comments at 12-13, and Vol. IX, Tab J, Falcone and Sherry Aff. at 40-47; AT&T Reply Comments at 5; CompTel Comments at 18-19; MFS WorldCom Comments at 16-17.

[835] *Local Competition Order*, 11 FCC Rcd at 15706.

[836] *See id.*; *Local Competition First Reconsideration Order*, 11 FCC Rcd at 13048; *see also* AT&T Comments, Vol. IX, Tab J, Falcone and Sherry Aff. at 38-47; CompTel Comments at 18-19.

[837] *Local Competition Order*, 11 FCC Rcd at 15682 n.772.

[838] *Id.* at 15682 and n.772; *see also Access Charge Reform Order* at para. 337 (reaffirming that sections 251(c)(3) and 252(d)(1) do not compel telecommunications carriers using unbundled network elements to pay access charges or restrict the ability of carriers to use network elements to provide originating and terminating access).

[839] The Commission's rules require incumbent LECs to provide unbundled network elements "in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element." 47 C.F.R. § 51.307(c). Moreover, the rules implementing section 251(c)(3) define unbundled network elements "as providing purchasers with the ability to provide originating and terminating interexchange access to themselves and to be the sole access provider to" themselves or unaffiliated providers. *Id.* §§ 51.307(c); 51.309(b)).

327. Ameritech's position on unbundled local switching likewise denies competitors access to the trunk-side facilities of the switch.[840] As AT&T contends, Ameritech's position denies competing LECs access to the trunk port facilities that are part of the unbundled switch.[841] We held in the *Local Competition Order* that some network elements, such as loops, are provided exclusively to one requesting carrier, and some network elements, like shared transport, are provided on a minute-of-use basis and are shared with other carriers.[842] In our *Local Competition Order*, we required incumbent LECs "to provide unbundled access to shared transmission facilities between end offices and the tandem."[843] In addition, as we clarified in our recent order on shared transport, incumbent LECs must provide unbundled access to shared transmission facilities between two end office switches and between two tandem switches.[844] Given that an incumbent LEC must make such transport facilities available on a shared basis, the trunk ports to which such trunks are attached must likewise be made available on a shared basis. Therefore, Ameritech may not, consistent with the Commission's requirements, require a purchaser of unbundled switching to purchase a dedicated trunk port.

328. We note that several parties indicate that Ameritech's unbundled local switching offering does not grant purchasers the ability to employ the existing routing instructions resident in Ameritech's end office switches.[845] Both end office and tandem switches contain routing tables, which provide information about how to route each call. The routing instructions notify the switch as to which trunks are to be used in transporting a call.[846] Since we defined unbundled local switching in our *Local Competition Order* to include the "features, functions, and capabilities of the switch,"[847] purchasers of unbundled local switching are entitled to obtain access to the same routing table that the incumbent LEC uses to route its own traffic over its switched network.[848] As we explain in our order on

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[840] *See Local Competition Order*, 11 FCC Rcd 15706.

[841] *See* AT&T Comments at 12-13.

[842] *Local Competition Order*, 11 FCC Rcd at 15631.

[843] *Id.* at 15718.

[844] *Local Competition Third Reconsideration Order* at paras. 25-29.

[845] *See, e.g.*, CompTel Comments at 19-20; TRA Comments at 35; MFS WorldCom Comments at 21, 24-25.

[846] *Local Competition Third Reconsideration Order* at para. 23 and n.69.

[847] *Local Competition Order*, 11 FCC Rcd at 15706.

[848] *Local Competition Third Reconsideration Order* para. 23.

shared transport, routing is a critical and inseverable function of the local switch.[849] Accordingly, Ameritech must grant requesting telecommunications providers that purchase local switching access to its routing tables.

329. We emphasize that Ameritech must establish by a preponderance of the evidence that it provides the entire switching capability on nondiscriminatory terms in order to comply with the competitive checklist. As part of this obligation, Ameritech must permit competing carriers to provide exchange access, to purchase trunk ports on a shared basis, and to access the routing tables resident in its switches.

330. Other issues. The parties raise other factual and legal issues on the record regarding Ameritech's provision of unbundled local switching. For instance, MCI has expressed concerns regarding Ameritech's technical ability to provide unbundled local switching in a manner consistent with its entry strategy.[850] We anticipate that many such issues will be resolved as Ameritech conforms its provision of unbundled local switching to the Commission's requirements. We also expect that the Michigan Commission and the Department of Justice will provide clear and specific records on these issues, to the extent that they arise in Michigan's next application. We are particularly concerned, however, about the dispute in the record regarding Ameritech's technical ability and obligation to provide usage information to competing LECs purchasing unbundled local switching with shared transport in a manner that permits competing LECs to collect access revenues.[851] We note that Ameritech asserts that it is not now technically feasible for Ameritech's local switches to provide precise usage data or originating carrier identity for terminating local usage or to identify terminating access usage with the called number.[852] AT&T asserts that Ameritech could develop appropriate software to generate such data.[853] Ameritech proposes an interim approach for estimating terminating usage, pursuant to which it has said it will continue to bill interexchange carriers for terminating usage based upon a mutually agreed-upon factor that

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[849] *Id.* at para. 45.

[850] *E.g.*, MCI Comments at 28-31, Exh.G, Sanborn Aff. at 34-35 (contending that Ameritech has not resolved processes regarding traffic flows, customized routing, and numbering; raising questions regarding the interoperability of Ameritech's unbundled switch offering). *Compare* Ameritech Reply Comments, Vol. 5R.12, Kocher Reply Aff. at 26-28 (responding to allegations).

[851] *See* Department of Justice Evaluation at 19-20; *see* AT&T Comments, Vol. IX, Tab J, Falcone and Sherry Aff. at 44-45, 48-49. *See also Local Competition Third Reconsideration Order* at para. 26 n.77.

[852] Ameritech Comments, Vol. 2.5, Kocher Aff. at 37-38; Ameritech Reply Comments at 22, and Vol. 5R.12, Kocher Reply Aff. at 34-40. AT&T and others have moved to strike portions of Ameritech's reply comments and accompanying affidavit support on this point. AT&T Motion to Strike, Exhibit A; Joint Motion to Strike, Proposed Order. *Compare* Ameritech Michigan's Response to Motions to Strike, Appendix A at 4.

[853] *See* AT&T Comments, Vol. IX, Tab J, Falcone and Sherry Aff. at 48-49.